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2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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6 SECURITIES AND EXCHANGE)
7 COMMISSION,)
8 Plaintiff,)
9 vs.) Case No: 2:23cv482
10 DIGITAL LICENSING, a)
11 Wyoming corporation doing)
business as Debt Box, et)
al,)
12 Defendants.)

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18 BEFORE THE HONORABLE ROBERT J. SHELBY

19 SEPTEMBER 18, 2023

20 ZOOM STATUS CONFERENCE

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Reported by:

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1 SALT LAKE CITY, UTAH, MONDAY, SEPTEMBER 18, 2023

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3 THE COURT: Let's go on the record and call Case
4 Number 2:23-CV-482. It's our SEC vs. Digital Licensing, and
5 others case. This is the time set for our -- I don't know
6 what to call it -- just a working meeting, I guess. A
7 hearing. We'll call it a status update. I have some other I
8 think matters to cover with everybody.

9 There's one person on who just joined us. Please
10 place yourself on mute so we don't accidentally get some
11 feedback while we're on the hearing.

12 Let me start where I started last time by just
13 reminding everybody that this is a hearing that's designated
14 for parties and lawyers only who are our SEC case that we just
15 called, and that it's unlawful to make any recording of the
16 proceedings in the United States District Court by audio or
17 video or any other means.

18 Let's go ahead and make our appearances. I think
19 I'll just try to work through in the same order as we did last
20 time. For the Commission?

21 MR. FRONK: Your Honor, this is Casey Fronk for the
22 Commission.

23 THE COURT: Great. Thank you.

24 For the receiver.

25 MS. MAGEE: Good afternoon. Jessica Magee joined

1 by local counsel Jason McNeill for the receiver.

2 THE COURT: Welcome back.

3 For the Gottlieb defendants, is how I'm going to
4 refer to them today. That's where we were at the end of our
5 last hearing.

6 MR. BROOKS: Your Honor, my name is Jeff Brooks.

7 I'm filling in for Mr. Gottlieb. I'll be making his
8 appearance with your permission, if you will. I have
9 submitted a motion for admission pro hoc vice this afternoon,
10 but I believe it's still pending. Mr. Gottlieb was out
11 teaching a law class at Fordham Law I believe, this evening,
12 so he asked me to step in, and with your permission I will do
13 so.

14 THE COURT: Mr. Brooks, it's good to have you with
15 us. And we'll turn to your -- your motion is granted. We'll
16 respond to it tomorrow more formally.

17 MR. BROOKS: Thank you, Your Honor.

18 THE COURT: Mr. Marshall, I see you.

19 MR. MARSHALL: Yes. Thank you, Your Honor. And
20 I'm here with Mr. Jose Abarca for IX Global, Joseph Martinez
21 and Travis Flaherty.

22 THE COURT: Mr. Baker, are you with us?

23 MR. CURTIS: No, Your Honor. But Brennan Curtis of
24 Parsons Behle for defendant Brendan Stangis for
25 Brent Baker, as well, today.

1 THE COURT: All right. Welcome. Thank you.

2 MR. CURTIS: Thank you.

3 THE COURT: Sorry?

4 MR. CURTIS: I just said thank you.

5 THE COURT: Mr. Grundvig?

6 MR. GRUNDVIG: Your Honor, good afternoon. Adam
7 Grundvig on behalf of Matthew Fritzsche.

8 THE COURT: Welcome back.

9 Ms. Nuvan, I see you.

10 MS. NUvan: Yes, Your Honor; on behalf of defendant
11 Ryan Bowen.

12 THE COURT: Let's see. Someone else is here for
13 Mr. Brady, I think.

14 MR. WOODWELL: Yes, Your Honor. Keith Woodwell for
15 defendants Daniels, Schuler and Dr. Parker and for B&B
16 Investment Group and for BW Holdings.

17 THE COURT: Great. Welcome. And let's see. Let
18 me ask, Mr. Fronk, has Mr. Franklin been served yet?

19 MR. FRONK: No, Your Honor, Mr. Franklin has not
20 yet been served.

21 THE COURT: Okay. So I have a couple things I'd
22 like to cover that we didn't go through on Friday when we were
23 together, and then I've spent some time looking at the motions
24 to dissolve.

25 Let's begin with -- how are we doing on our running

1 meet and confer, Mr. Fronk?

2 MR. FRONK: Yes, Your Honor. So we've been in
3 communication with the defendants regarding responses, and we
4 currently don't see any issues or disagreements with regard to
5 the large majority of defendants. With respect to what you
6 call the Gottlieb defendants we had a meet and confer earlier
7 today to discuss both our RFPs as to those defendants and some
8 RFPs that they served on us late last week.

9 So, Your Honor, as to our RFPs as to those
10 defendants we served six RFPs on them. At the meet and confer
11 we agreed to withdraw one and potentially withdraw a second to
12 the extent they would agree to authentication of the documents
13 that we attached and cited in the Watkins declaration. And
14 then we agreed to limit a third of those RFPs. At that point,
15 defendants' counsel agreed to revert and get back to us on
16 whether that would resolve any disagreements as to our RFPs.

17 As to their RFPs last week as I said, and I
18 apologize, it was on Tuesday last week that they served these
19 on us, there were 27 RFPs that they served. And we feel those
20 are extremely broad. And while they might have relevance to
21 the case as a whole, a lot of them don't have any relevance as
22 to the specific issues that would be before the Court on the
23 PI hearing.

24 So today on the meet and confer we discussed that
25 and asked defendants to review the RFPs that they served on us

1 and to the extent they could agree to narrow or withdraw some
2 of those that may not be relevant to the PI hearing, to get
3 back to us. We left it at that, and we are trying to schedule
4 right now a second meet and confer for tomorrow to try to
5 bring all of these to resolution.

6 THE COURT: Thank you. I appreciate that update.

7 It sounds to me like from the Commission's view at least you
8 don't need anything from me today.

9 MR. FRONK: That's right, Your Honor. I expect
10 that we may bring something to you later to the extent we
11 can't agree tomorrow or on a subsequent day. But we think
12 that things are moving towards potential resolution.

13 THE COURT: All right. Thank you.

14 Let's see. Why don't we -- Mr. Brooks, is there
15 anything you would like to add to that on behalf of the
16 Gottlieb defendants?

17 MR. BROOKS: No, Your Honor. I think Mr. Fronk's
18 summary was accurate. And we are also hopeful that we'll be
19 able to reach a full agreement with the SEC on their requests
20 either tomorrow morning or shortly thereafter.

21 THE COURT: Outstanding.

22 Mr. Marshall, anything you would like to add as
23 coordinating counsel for the non-Gottlieb defendants?

24 MR. MARSHALL: No. No thank you, Your Honor. I
25 will say I have not coordinated yet with all counsel on issues

1 that we'll likely bring to the Court throughout the remainder
2 of this week. Maybe not. I plan to do that for those on the
3 call within the next 24 hours.

4 THE COURT: All right. Excellent.

5 Let me ask you, Mr. Fronk -- well, no, let me
6 complicate your life first -- no. I'm going to forget to ask
7 this question if I don't ask it now.

8 Do you -- should we schedule a 5 o'clock meeting
9 for tomorrow, or should we wait and hear back from all of you
10 by e-mail or something?

11 MR. FRONK: Your Honor, I think letting us get back
12 to you by e-mail tomorrow might work. And to the extent there
13 are still outstanding issues, we could then schedule a
14 hearing. But I believe that we're going to have a meet and
15 confer tomorrow, and hopefully if everything goes well we'll
16 be resolved. If not, we can let you or your clerk know in an
17 e-mail and go from there.

18 THE COURT: Past experience tells me that just
19 having a hearing scheduled often changes the tenor of a meet
20 and confer because everybody knows they're going to be
21 visiting with me. But let's try this for a day and see how it
22 goes. We're going to run out of time later in the week, and
23 so if we seem to lose our momentum tomorrow in your meet and
24 confer we'll start daily again Wednesday. Or anybody e-mail
25 me if you think you're running into some hurdles and we need

1 some help. All right. I appreciate your efforts, counsel.

2 Thank you.

3 Let me first provide some information I should have
4 provided when we spoke on Friday about the Court's, my
5 practice for TRO and preliminary injunction hearings. In
6 connection with the deadlines and the briefing that we sent
7 out last week I just want to explain that it's my expectation
8 that the parties will submit direct evidence -- direct
9 testimony, rather, of witnesses by way of affidavit and
10 declaration in connection with their briefs. And so that will
11 begin with the Commission. And I know we're on a tight
12 timeline. If we think about this as an evidentiary hearing,
13 submit all of your direct testimony by affidavit or
14 declaration. The same then with the defendants in their
15 opposition. And then under some circumstances it might be
16 appropriate to receive something more by way of affirmative
17 evidence from the Commission, but usually we ought to have
18 your affirmative evidence with your opening brief.

19 And then I'm going to require counsel to meet and
20 confer after we get at least past the opposition briefing from
21 the defendants. It's common for issues to narrow and the
22 scope of disagreement to become more precise and for us to get
23 a better idea once the opposition is filed what are the live
24 issues and which witnesses are essential to proceed. And then
25 we need to start working on ensuring the availability of those

1 witnesses at the preliminary injunction hearing. And we'll
2 begin with cross-examination. I will have read all of the
3 affirmative evidence, all the affidavits and declarations, so
4 we'll just start calling witnesses for cross-examination and
5 then redirect by way of taking testimony. I just wanted to
6 familiarize everybody with that practice. It's just trying to
7 be as efficient as we can be at the hearing. Rather than go
8 around the horn, if anyone has any question about that, now is
9 the time to raise your hand and we can have some further
10 discussion.

11 Terrific. I see skilled and experienced counsel,
12 so this is all familiar to you.

13 I said at the outset we've taken some time to
14 review the motions to dissolve the TRO that were previously
15 filed. We received the Gottlieb defendants' motion to
16 dissolve. Docket 132 was filed on September 12th.
17 Mr. Marshall filed on behalf of his clients a motion to
18 dissolve Docket 145 on September 14th. The following day on
19 the 15th I suspended briefing on those motions, and I'm now
20 going to impose a briefing deadline and set a hearing on those
21 motions. And I know that it complicates what is already a
22 busy and full plate for all of you, especially at the
23 Commission.

24 I'm just going to think out loud for a second about
25 the effect of this, but let me give you the punch line first.

1 I'm going to order that the Commission respond to both motions
2 to dissolve no later than September 27th. And so that's next
3 Wednesday. That's a day before the briefing would ordinarily
4 had been due on the Gottlieb defendants' motion recognizing
5 I've stolen two or three days from the Commission by
6 suspending briefing on Friday and probably leaving you with
7 the feeling that you didn't have to be working on those. But
8 we're going to resume briefing on that motion. It does leave
9 you short several days on Mr. Marshall's motion, though it was
10 noticeably shorter I think and probably less complicated to
11 respond to.

12 Any parties who wish to file replies in response to
13 those motions, and I mean filing parties. We're not going to
14 have replies now coming in from people who didn't file the
15 briefs in the first instance. But reply briefs if any will be
16 due no later than October 3rd. And what I'm going to propose
17 pending what I read in the papers, and I suspect, I'm just
18 going to guess, that the Commission will reach some agreement
19 with some probably of the non-Gottlieb defendants, but I'm not
20 requiring that. I'm going to propose we have a hearing on the
21 motions to dissolve at 1 o'clock Mountain Time on October 6th.
22 That's a Friday. I'm not going to ask everybody's
23 availability because we're just going to keep with this
24 calendar. We've got to get through these motions here and
25 decide them. They're urgent.

1 I do want to ask the receiver to -- one of the
2 issues raised in the Gottlieb defendants' motion to dissolve
3 was an argument that there may be a potential conflict of
4 interest if she were the receiver. I'm going to ask that the
5 receiver address that in its own filing, his own filing on or
6 about September 27th, the same date for oppositions to the
7 motions to dissolve.

8 I strongly prefer in-person hearings where that's
9 feasible. I think that would be unfair in this case given we
10 have so many counsel from out of state working on this and so
11 many counsel involved, and I want all of you to be able to
12 attend if you want without incurring significant attorney's
13 fees and costs for your clients including those of you who are
14 with us today who did not file one of these motions.

15 So I think we'll set -- well, not I think. We
16 will set that hearing for a Zoom hearing. I don't think it's
17 going to be an evidentiary hearing, but we'll see what we get
18 by way of oppositions.

19 Questions about the timetable I've just set up, put
20 in place or how we're going to proceed, Mr. Fronk?

21 I'll get to you in a moment, Mr. Grundvig. Thank
22 you.

23 MR. FRONK: No questions from the SEC, Your Honor.

24 THE COURT: Miss Magee?

25 MS. MAGEE: I just want to make sure that I'm

1 following Your Honor. You only want a response on the issue
2 of the alleged conflict of interest, not on the other issues
3 raised?

4 THE COURT: Let's talk about that for a moment.

5 It's the Commission that's -- well, let me think about it. Do
6 you think there are other issues that pertain to the receiver
7 that were raised in either of the motions to dissolve?

8 MS. MAGEE: Only in the Gottlieb defendants' motion
9 to dissolve.

10 Mr. Marshall, correct me if I'm wrong. Waive a
11 hand. But I don't think that that motion raises any points
12 with regard to the receivership or the work of the receiver.
13 I think that the Gottlieb defendants' motion to dissolve and
14 I'll say substitute receiver, that's not the technical title
15 of the document, also issues around failure to pay ordinary
16 expenses in what I would call negligence or fiduciary issues.

17 THE COURT: Yes.

18 MS. MAGEE: So if the Court would like to hear from
19 us about those issues we're happy to address them all.

20 THE COURT: I would like to hear from the receiver
21 on those issues, save for one. As I remember there was a
22 request, and I think it was embedded in the same motion, to
23 substitute a new local receiver. We're not going to do that
24 at this stage. We'll talk about that if, and or when we need
25 to talk about it.

1 But the other issues raised by the Gottlieb
2 defendants, and thank you for reminding me about that,
3 Miss Magee, let's have a complete response from the receiver
4 so we can set the table for replies, if there are any.

5 MS. MAGEE: Yes, Your Honor.

6 THE COURT: Mr. Brooks, anything from you with
7 respect to this plan?

8 MR. BROOKS: No. I think it makes sense, Your
9 Honor. I would just note that we have filed today, again a
10 few hours ago, a notice of supplemental authority addressing
11 one of the questions that you had asked on Friday.

12 THE COURT: I saw that, and I appreciate that. We
13 haven't had a chance to vet that yet. I'm going to continue
14 to be focusing on this, on the legal standard that I assume
15 but don't know that the receiver is going to submit additional
16 evidence in support of an opposition to the motion to
17 dissolve. And I hope that the receiver will also address this
18 question.

19 I'm just going to -- I think I can frame this
20 question better today than I did last week. Suppose if the
21 receiver submits new evidence and new argument that would
22 otherwise support the issuance of an injunction on
23 October 6th, it really poses this question. Would a court
24 dissolve on Friday a TRO that issued on Monday because the
25 evidence that supported the TRO initially was proven to be

1 incorrect or incomplete? But it's shown that there was
2 evidence on Monday, just not known to the receiver or
3 presented to the Court that would support the issuance of the
4 injunction.

5 It seems -- legally it just seems odd to me that I
6 would be presented with evidence and argument that would
7 support the issuance of an injunction, and I would dissolve
8 the one that was in place, anyway. But that may be where we
9 land. It is conceivable in my mind that we would be
10 dissolving the injunction and going forward with the
11 preliminary injunction that we have scheduled on the schedule
12 that we have in place. But we'll see. One step at a time.

13 Anyway, I think you all understood that issue. I
14 just wanted to recite it again. Anything more, Mr. Brooks?

15 MR. BROOKS: No, Your Honor.

16 THE COURT: Mr. Grundvig, you wanted to weigh in
17 into the thicket.

18 MR. GRUNDVIG: Yes, please, Your Honor. Just a
19 quick question about whether the Court would appreciate or
20 even allow if not appreciate, a filing respecting the Gottlieb
21 or Marshall motions, as Your Honor has called them. To be
22 more clear, Mr. Fritzsché does believe that he is similarly
23 situated to Mr. Marshall's clients and did plan on filing a
24 joinder, would that be allowed?

25 THE COURT: I'm glad you raised that question,

1 because I don't want the -- especially in the midst of what is
2 already expedited briefing now and a handful of other things,
3 I don't want the receiver or the Commission having,
4 continuously being distracted by new motions raising similar
5 issues or what have you.

6 So I think it will be permissible for other
7 non-Gottlieb defendants to join if they wish in the motion
8 filed by Mr. Marshall. But what I'm not going to do now is
9 receive new arguments, new authority, new request for relief
10 related to the same issues raised by Mr. Marshall. You could
11 file those briefs, but we're not going to brief them and
12 decide them on the timeline that I've just imposed for these
13 motions that have already been filed. Is that clear enough?

14 MR. GRUNDVIG: Yes, Your Honor. Thank you so much.

15 THE COURT: Terrific. But we should set a deadline
16 for those joinders so we know who's in and who's not in. I'm
17 going to propose Wednesday, unless there's anyone who thinks
18 you can't consult with your client and file a mere joinder
19 before the end of the day on Wednesday. If there's anyone who
20 feels that way this is a good time to raise your hand.

21 Terrific. So any non-Gottlieb defendants who wish
22 to join in Mr. Marshall's filing without raising new
23 arguments, new facts, new law, you're welcome to do that no
24 later than Wednesday. Mr. Grundvig, yes.

25 MR. GRUNDVIG: A little clarification, Your Honor.

1 Thank you. I suppose the Court would also permit joinder by a
2 non-Gottlieb defendants or situated party in portions of the
3 Gottlieb filing.

4 THE COURT: I'm not sure. I need to think about
5 that. But let me respond to that in a moment. I said no new
6 facts a moment ago. I think non-Gottlieb defendants who think
7 they are similarly situated to Mr. Marshall's clients ought to
8 at least be able to explain why they believe that's the case.
9 So we'll receive what facts we need in those joinders, just no
10 arguments, no law and no request for different relief.

11 Now with respect to the Gottlieb motion, if you
12 think, Mr. Grundvig, you might be inclined to do that if your
13 lawyer consents -- or your client consents, I think I'd like
14 to understand what that might look like. I don't want to
15 sidetrack and I don't want to impede the Commission's ability
16 to focus on what's in front of us and resolve it.

17 MR. GRUNDVIG: I can provide an example if you
18 wish, Your Honor, at this point.

19 THE COURT: Yes.

20 MR. GRUNDVIG: Mr. Gottlieb's team has identified a
21 variety of problems in resolving the TRO including the
22 issuance of several hundred subpoenas in an enforcement
23 action. And I think that that is something that Mr. Fritzsche
24 having just responded to such a subpoena last Friday that he
25 believes was improper that he would like the Court to

1 understand that position, not just from the Gottlieb
2 defendants' perspective, but from his as well.

3 THE COURT: So the question about the propriety of
4 the subpoenas I think is squarely before the Court. I think
5 if I'm understanding what you're saying, you wish to reserve
6 the opportunity to make an argument about how some of the
7 recipients of those subpoenas are affected by the subpoenas,
8 which is a separate question on whether they were the correct
9 vehicle to utilize in this case.

10 MR. GRUNDVIG: The bigger point, Your Honor, is to
11 let the Court know that it's not just the Gottlieb defendants,
12 pardon me, that are affected by these subpoenas. It is
13 somewhat of a me-too position, Your Honor, but Mr. Fritzsche
14 has been affected and would like the Court to know it.

15 THE COURT: Well, of course you can provide
16 information to educate the Court and so that your client feels
17 that your client's position is being understood. So of
18 course. And so long as it's not raising new questions, new
19 legal authority that might encumber the receiver, that can be
20 done by this Wednesday in the same manner that we've just
21 described.

22 And I'll read everything that's submitted. I'll
23 understand what you all have said. I will say, this probably
24 goes without saying -- well, in fact, I'm not going to say it
25 for fear some of you might understand it as an invitation to

1 file more stuff. But you file what you need to file. So I'll
2 just pull up here.

3 Who else has any questions that they would like to
4 raise or logistical issues that you think we should take up?

5 Okay. I'm going to take that to mean that we've
6 covered everything that we need to cover today. I'm going to
7 hold time at 5 o'clock tomorrow just in case, and I'm going to
8 keep my fingers crossed that we make steady progress under the
9 threat that I might be grumpy tomorrow at 5 o'clock if we're
10 on a call with one another arguing about stuff. But I
11 understand that that may happen.

12 I wish you all well. I appreciate the work you've
13 put into this. And I think we'll go a day at a time for a
14 little bit this week and just see where we get.

15 Thank you, counsel, for your patience and for
16 joining us a hearing late. I didn't know how else we could
17 get this scheduled and make sure that everybody was likely
18 available.

19 Mr. Grundvig, something more from you before we
20 stop? You just came off mute? No?

21 Thanks, everyone. We'll be in recess.

22 (The court proceedings were concluded.)

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1 STATE OF UTAH)
2) ss.
3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on September 18, 2023, and thereat
8 reported in Stenotype all of the testimony and proceedings
9 had, and caused said notes to be transcribed into typewriting;
10 and the foregoing pages number from 4 through 20 constitute a
11 full, true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this _____ day of
15 _____ 2023.

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KELLY BROWN HICKEN, CSR, RPR, RMR